

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SENDMAIL, INC,

Plaintiff,

v.

TUMBLEWEED COMMUNICATIONS,

Defendant.

No. C-08-05542 JCS (EDL)

NOTICE OF SETTLEMENT
CONFERENCE AND SETTLEMENT
CONFERENCE ORDER

TO ALL PARTIES AND COUNSEL OF RECORD:

The above matter was referred to Magistrate Judge Elizabeth D. Laporte for Settlement Conference with the related matter C08-4318 JCS (EDL) which is scheduled for **May 1, 2009 at 9:30 a.m.**, Courtroom E, 15th Floor, Federal Building, 450 Golden Gate Avenue, San Francisco, California 94102. If the above date is not possible for the parties and counsel, or if the parties believe that settlement discussions would be more productive at a different time, counsel shall confer with each other and then contact Magistrate Judge Laporte's Courtroom Deputy **within a week** at (415) 522-3694 to determine whether it is possible and appropriate to reschedule the conference.

Lead trial counsel shall appear at the Settlement Conference with the parties and with the person or persons having **full authority** to negotiate and to settle the case. In all cases in which a party is insured, the carrier's claims representative and attorney, if any, with **full authority** to negotiate up to the limits of coverage shall also attend the Settlement Conference. In cases where settlement authority rests with a governing body, counsel shall advise the Court and opposing counsel by letter at least 72 hours prior to the conference, of the manner in which the governing body will appear.

1 Personal attendance by counsel will not be excused under any circumstances and personal
2 attendance by a party will rarely be excused. Permission for a party to attend by telephone may be
3 granted, in the Court's discretion, upon written request made at least two weeks in advance of the
4 conference, **if** the party lives and works outside of the Northern District of California **and** the Court
5 determines that personal attendance would constitute a hardship and is not needed in order to have an
6 effective settlement conference. The nature of the hardship must be explained. A copy of the written
7 request must be served on all other parties. Any objection to the request must be submitted within forty-
8 eight (48) hours of receipt. Both the request and objection may be submitted in letter form either by
9 mail or facsimile to (415) 522-2002. If telephone attendance is allowed, the party must be available
10 throughout the entire conference.

11 **On or before April 20, 2009, the parties shall deliver directly to the Magistrate Judge a**
12 **Confidential Settlement Conference Statement which should not be filed with the Clerk of the**
13 **Court or served upon other parties.**

14 The Confidential Settlement Conference Statement shall not exceed twenty-five (25) pages of
15 text exclusive of exhibits. (Parties are encouraged to include as exhibits any key documents and
16 deposition excerpts). The Confidential Settlement Conference Statement shall include the following:

- 17 1. A brief statement of the facts of the case.
- 18 2. A brief statement of the claims and defenses including, but not limited to, statutory or
19 other grounds upon which the claims are founded, a candid, forthright evaluation of the parties'
20 likelihood of prevailing on the claims and defenses and a description of the major issues in dispute.
- 21 3. A list of the key facts in dispute and a brief statement of the specific evidence relevant
22 to those facts.
- 23 4. A summary of the proceedings to date and any pending motions.
- 24 5. An estimate of the out of pocket expenses, attorney's fees and time to be expended for
25 further discovery, pretrial and trial.
- 26 6. The relief sought, including an itemization of damages.
- 27 7. The party's position on settlement, including present demands and offers and a history
28 of past settlement discussions.

8. If there have been no prior settlement discussions, plaintiff must serve a demand letter outlining its theories for recovery, supporting facts and damages in writing **at least 7 days before** the conference, and defendant must respond in writing **at least 3 days before** the conference.

It is not unusual for conferences to last two to three hours or more. No participant in the settlement conference will be permitted to leave the settlement conference before it is concluded without the permission of the settlement conference judge.

Parties are encouraged to participate and frankly discuss their case. Statements they make during the conference will not be admissible at trial to prove or disprove liability in the event the case does not settle. The parties should be prepared to discuss such items as their settlement objectives, any impediments to settlement that they perceive, whether they have enough information to discuss settlement and, if not, what additional information is needed and the possibility of a creative resolution of the dispute.

Any request to continue the settlement conference shall be submitted in writing as soon as possible after consultation with the opposing party. **The request must demonstrate a compelling reason for a continuance,** and state whether the opposing party(ies) agree or oppose the request. Any party who objects to the continuance should submit a written response within 2 business days. Submission by facsimile is acceptable at facsimile number (415) 522-2002. **A paper copy of all electronically filed documents must be delivered to chambers no later than 12:00 noon on the day after the document is electronically filed.**

The parties shall notify Magistrate Judge Laporte's Courtroom Deputy **immediately** at (415) 522-3694 if this case settles prior to the date set for settlement conference.

Dated: March 23, 2009

Elizabeth D. Laporte
ELIZABETH D. LAPORTE
United States Magistrate Judge